

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

PEDRO FELIPE LEMA,	:	PRISONER HABEAS CORPUS
BOP Reg. # 52018-004,	:	28 U.S.C. § 2241
Petitioner,	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	CIVIL ACTION NO.
Respondent.	:	1:17-CV-1776-TWT-AJB

**UNITED STATES MAGISTRATE JUDGE'S
FINAL REPORT AND RECOMMENDATION**

Petitioner, Pedro Felipe Lema, confined in the Medium Federal Correctional Institution in Beaumont, Texas, has submitted a document intended for the United States Court of Appeals for the Eleventh Circuit, namely, an application for leave to file a second or successive motion pursuant to 28 U.S.C. § 2255 by a prisoner in federal custody. [Doc. 1.]¹

I. Discussion

“Before a second or successive [§ 2255 motion] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the

¹ For the purpose of this Court’s recordkeeping only, the Clerk is **DIRECTED** to update the docket sheet to reflect that the cause of action is a 28 U.S.C. § 2241 federal habeas corpus petition, not a § 2254 state habeas corpus petition.

district court to consider the [motion].” 28 U.S.C. § 2244(b)(3)(A). Petitioner has incorrectly submitted his application for leave to file a second or successive § 2255 motion to the District Court instead of the Eleventh Circuit. It does not appear that Petitioner intended to seek any relief from the District Court at this time.

A civil action or appeal may be transferred from a court lacking jurisdiction to the proper court “if it is in the interest of justice . . .” 28 U.S.C. § 1631. However, the Eleventh Circuit has questioned whether § 1631 authorizes a district court to transfer an application for leave to file a second or successive § 2255 motion to a court of appeals. *See Guenther v. Holt*, 173 F.3d 1328, 1330-31 & n.4 (11th Cir. 1999). Accordingly, the District Court should dismiss this action without prejudice and direct Petitioner to submit his application for leave to file a second or successive § 2255 motion to the Eleventh Circuit.²

II. Conclusion

For the reasons stated above,

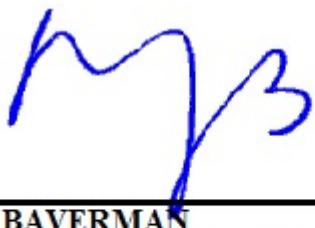
IT IS RECOMMENDED that (1) this action be **DISMISSED WITHOUT PREJUDICE**, and (2) Petitioner be directed to submit his application for leave to file

² Petitioner need not await a final order from the District Court to submit his application to the Eleventh Circuit.

a second or successive § 2255 motion to the Eleventh Circuit.

The Clerk is **DIRECTED** to terminate the referral to the undersigned.

IT IS SO RECOMMENDED and DIRECTED, this 22nd day of May, 2017.



ALAN J. BAVERMAN
UNITED STATES MAGISTRATE JUDGE